

2005 DRAFTING REQUEST

Bill

Received: **10/24/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing: **Jennifer Stegall (aide)**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - decisionmaking**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Roessler@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Anatomical gift as part of a living will

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 10/24/2004	lkunkel 11/11/2004 lkunkel 12/08/2004		_____			State
/1			rschluet 12/09/2004	_____	lnorthro 12/09/2004	lnorthro 02/09/2005	

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At intro.

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/?	dkennedy	1/mk 11/11					
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11/8/12/8

[Handwritten signature and initials over the Drafting History table]

FE Sent For:

<END>

Kennedy, Debora

From: Stegall, Jennifer
Sent: Friday, October 22, 2004 5:06 PM
To: Kennedy, Debora
Subject: Anatomical Gift as part of a living will

Hi Debora,

Senator Roessler would like to have 2003 SB 336 redrafted. Please include the amendment that was adopted as well. Senate Amendment 1 was adopted (LRB 1885/3) and Senate Amendment 1 to Senate Amendment 1 was also adopted (LRB 2231/1).

Thank you!

Jennifer Stegall
Office of Senator Carol Roessler
266-5300

8 (END)

2003 SENATE BILL 336

December 3, 2003 - Introduced by Senators ROESSLER, DARLING, LAZICH, A. LASEE, LASSA and RISSE, cosponsored by Representatives HUNDERTMARK, GIELOW, BERCEAU, KRAWCZYK, HINES, J. LEHMAN, MILLER, OTT, TOWNSEND, VAN ROY, WASSERMAN, WEBER and TAYLOR. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

LPS: PIS/PWF

ReGen

and eliminating the designation of a specific physician to perform transplantation

- 1 AN ACT to amend 154.03 (2) (form); and to create 154.06, 157.06 (2) (f) 7. and
2 157.06 (2) (i) 2m. of the statutes; relating to: creating the option to make an
3 anatomical gift as part of a living will.

years old

Analysis by the Legislative Reference Bureau

Under current law, a person who is ~~aged~~ at least 18 may donate all or part of his or her body after death (make an anatomical gift) by signing a document of gift, together with two witnesses, or by signing the reverse side of a regular driver's license, a document that may be attached to a commercial driver's license, or an identification card that is issued by the Department of Transportation. In addition, a person may specify in a power of attorney for health care instrument that he or she wishes to make an anatomical gift. A person may also refuse to make an anatomical gift; limit an anatomical gift to specific purposes, including particular donees; require that a particular physician carry out the appropriate procedures; amend an anatomical gift; or revoke an anatomical gift. Lastly, a person may revoke or amend a refusal to make an anatomical gift. Any anatomical gift made by the donor that is not revoked by the donor before death is irrevocable and does not require the consent of anyone after the donor's death.

INSERT
AI

This bill authorizes a person who executes a declaration to physicians (a living will) to make an anatomical gift, amend such a gift, revoke an anatomical gift, or refuse to make an anatomical gift, as part of the living will. The bill permits the declarant of the living will to donate all or a part of his or her body to a specific donee or for a specific purpose and to specify a physician to carry out the appropriate

SENATE BILL 336

INSERT A 2

~~procedures~~ The bill specifies that failure to make an indication of desire or refusal to make an anatomical gift does not create a presumption about the declarant's intent with regard to the matter. INSERT A 3

✓ For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 154.03 (2) (form) of the statutes is amended to read:

154.03 (2) (form)

DECLARATION TO PHYSICIANS

(WISCONSIN LIVING WILL)

I,...., being of sound mind, voluntarily state my desire that my dying not be prolonged under the circumstances specified in this document. Under those circumstances, I direct that I be permitted to die naturally. If I am unable to give directions regarding the use of life-sustaining procedures or feeding tubes, I intend that my family and physician honor this document as the final expression of my legal right to refuse medical or surgical treatment.

INSERT 2-10

1. If I have a TERMINAL CONDITION, as determined by 2 physicians who have personally examined me, I do not want my dying to be artificially prolonged and I do not want life-sustaining procedures to be used. In addition, the following are my directions regarding the use of feeding tubes:

.... YES, I want feeding tubes used if I have a terminal condition.

.... NO, I do not want feeding tubes used if I have a terminal condition.

If you have not checked either box, feeding tubes will be used.

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1 2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2
2 physicians who have personally examined me, the following are my directions
3 regarding the use of life-sustaining procedures:

4 YES, I want life-sustaining procedures used if I am in a persistent
5 vegetative state.

6 NO, I do not want life-sustaining procedures used if I am in a persistent
7 vegetative state.

8 If you have not checked either box, life-sustaining procedures will be used.

9 3. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2
10 physicians who have personally examined me, the following are my directions
11 regarding the use of feeding tubes:

12 YES, I want feeding tubes used if I am in a persistent vegetative state.

13 NO, I do not want feeding tubes used if I am in a persistent vegetative state.

14 If you have not checked either box, feeding tubes will be used.

15 If you are interested in more information about the significant terms used in
16 this document, see section 154.01 of the Wisconsin Statutes or the information
17 accompanying this document.

18 ATTENTION: You and the 2 witnesses must sign the document at the same
19 time.

20 Signed

←Date

21 Address

Date of birth

22 I believe that the person signing this document is of sound mind. I am an adult
23 and am not related to the person signing this document by blood, marriage or
24 adoption. I am not entitled to and do not have a claim on any portion of the person's
25 estate and am not otherwise restricted by law from being a witness.

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1 Witness signature

Date signed

2 Print name

3 Witness signature ...

Date signed

4 Print name

5 DIRECTIVES TO ATTENDING PHYSICIAN

1. This document authorizes the withholding or withdrawal of life-sustaining procedures or of feeding tubes when 2 physicians, one of whom is the attending physician, have personally examined and certified in writing that the patient has a terminal condition or is in a persistent vegetative state.

2. The choices in this document were made by a competent adult. Under the law, the patient's stated desires must be followed unless you believe that withholding or withdrawing life-sustaining procedures or feeding tubes would cause the patient pain or reduced comfort and that the pain or discomfort cannot be alleviated through pain relief measures. If the patient's stated desires are that life-sustaining procedures or feeding tubes be used, this directive must be followed.

3. If you feel that you cannot comply with this document, you must make a good faith attempt to transfer the patient to another physician who will comply. Refusal or failure to make a good faith attempt to do so constitutes unprofessional conduct.

19 4. If you know that the patient is pregnant, this document has no effect during
20 her pregnancy.

SENATE BILL 336

* * * * *

The person making this living will may use the following space to record the names of those individuals and health care providers to whom he or she has given copies of this document:

.....

.....

.....

* * * * *

ANATOMICAL GIFTS (optional)

At my death, the following are my directions regarding donation of my organs:

.... YES, I want to donate all of my ~~body~~ as an anatomical gift.

OR

.... YES, I want to donate the following specific ~~parts of~~ organs of my body as an anatomical gift:

INSERT
5-14

If I have signified "YES" to either of the options above, in addition, I may, but do not have to, indicate any or all of the following:

a. I want to donate all or part of my body to: (name of the donee)

b. I want to donate all or part of my body for this purpose:

c. I want Dr. (name of physician) to carry out the appropriate procedures.

INSERT
5-19

OR

.... NO, I do not want to donate all or any part of my body as an anatomical gift.

(If this revokes a prior commitment that I have made to make an anatomical gift to a designated donee, I will attempt to notify the donee to which or to whom I agreed to donate.)

SENATE BILL 336

SECTION 1

1 If I do not check any of the lines immediately above, no presumption is created
2 about my desire to make or refuse to make an anatomical gift. ✓

3 Signed X

Date

organs, tissues,
or eyes

4 **SECTION 2.** 154.06 of the statutes is created to read:

5 **154.06 Organ donation; amendment; revocation; refusal.** (1) A

6 declarant may make an anatomical gift of all ~~or part~~ ^{any or} of his or her ~~body~~ by indicating
7 his or her intent in the space provided on the declaration. A declaration that so
8 indicates the declarant's intent serves as a document of gift under s. 157.06 (2) (b). ✓

9 (2) A declarant who has made an anatomical gift as specified in sub. (1) may
10 amend his or her gift by adding to or changing the donor authorization in the space
11 provided on the declaration or by performing any of the procedures specified in s.
12 157.06 (2) (f) 1. to 4. ✓

13 (3) A declarant who has made an anatomical gift as specified in sub. (1) may
14 revoke his or her gift by crossing out the donor authorization in the space provided
15 on the declaration or by performing any of the procedures specified in s. 157.06 (2)
16 (f) 1. to 4. ✓

17 (4) A declarant may refuse to make an anatomical gift of all ~~or part~~ ^{any or} of his or
18 her ~~body~~ by indicating his or her intent in the space provided on the declaration. A
19 declaration that so indicates the declarant's intent serves as a document of refusal
20 to make an anatomical gift under s. 157.06 (2) (i). ✓

21 (5) Nothing in this section requires a declarant to make, amend, or refuse to
22 make an anatomical gift by means of a declaration or otherwise limits a declarant
23 from making, amending, or refusing to make an anatomical gift under alternative
24 procedures specified in s. 157.06. ✓

25 **SECTION 3.** 157.06 (2) (f) 7. of the statutes is created to read:

INSERT 6-24

SENATE BILL 336

1 157.06 (2) (f) 7. For a declarant who executes a living will, crossing out or
2 amending the donor authorization or refusal in the space provided on the declaration
3 as prescribed in s. 154.06 (2) and (4) or revoking the declaration as prescribed in
4 s. 154.06 (3).

INSERT
7-4

5 **SECTION 4.** 157.06 (2) (i) 2m. of the statutes is created to read:

6 157.06 (2) (i) 2m. For a declarant who executes a living will, making a
7 statement of refusal in the space provided in the declaration as prescribed in s.
8 154.06 (4).

INSERT
7-8

9

(END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0595/?ins
.....

INSERT A1

↗ Also under current law, a person may execute a declaration to physicians (commonly known as a living will), which authorizes a physician to withhold or withdraw life-sustaining procedures or feeding tubes from the person when the person is in a terminal condition or is in a persistent vegetative state. ✓

INSERT A2

organs, tissues, and eyes or to donate only specific organs, tissues, or eyes. ✓
Further, the bill permits the living will declarant to donate to a specific donee or, if that individual is not able to be a transplant recipient, to donate to any suitable person. ✓ Lastly, the bill permits the living will declarant to donate his or her organs, tissues, or eyes to a recovery agency for research and education if his or her organs, tissues, or eyes are unsuitable for transplantation. ✓

INSERT A3

↗ The bill eliminates the provision, under the anatomical gift laws, that permits a person to require that a particular physician carry out the procedures to make an anatomical gift. ✓

**SENATE AMENDMENT 1,
TO 2003 SENATE BILL 336**

January 30, 2004 - Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING
AND LONG TERM CARE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 3: after "will" insert "and eliminating designation of a specific
3 physician to perform transplantation".

4 **2.** Page 2, line 10: after that line insert:

5 In addition, I may, by this document, specify my wishes with respect to making
6 an anatomical gift upon my death. (LPS: please score)

7 **3.** Page 5, line 10: after "organs" insert "tissues, or eyes".

8 **4.** Page 5, line 11: delete "body" and substitute "organs, tissues, and eyes".

9 **5.** Page 5, line 13: delete "the following specific parts or organs" and substitute
10 "only the following specific organs, tissues, or eyes".

11 **6.** Page 5, line 14: after that line insert:

12 9 Organs for transplantation (indicate yes or no):

13 1 a. Heart:

INSERT
2-10

INSERT
5-14

- 1 (2) b. Liver:
- 2 (3) c. Lungs:
- 3 (4) d. Kidneys:
- 4 (5) e. Pancreas:
- 5 (6) f. Intestine:
- 6 (7) g. All organs listed:

7 Tissues for transplantation (indicate yes or no):

- 8 (1) a. Heart valves:
- 9 (2) b. Skin:
- 10 (3) c. Bone:
- 11 (4) d. Connective tissue:
- 12 (5) e. Saphenous vein:
- 13 (6) f. Femoral vein:
- 14 (7) g. All tissues listed:

15 Eyes for transplantation (indicate yes or no):

16 ~~7. Page 5, line 17: delete that line and substitute~~

- 17 (1) a. I want to donate my (list of organs, tissues, or eyes) to: (name of the
- 18 donee), but if that person is not able to be a transplant recipient, then I donate to
- 19 anyone for whom the anatomical gift is suitable.

20 ~~8. Page 5, line 18: delete that line and substitute~~

- 21 (2) b. I want to donate any or all of my organs, tissues, or eyes for the purpose of
- 22 transplantation, but if transplantation is not able to occur, or my organs, tissues, or
- 23 eyes are unsuitable for transplantation, I want to donate any or all of my organs,
- 24 tissues, or eyes to a recovery agency for research and education.

1 ~~9.~~ Page 5, line 19: delete that line.

2 ~~10.~~ Page 5, line 21: delete "all or any part of my body" and substitute "any or
3 all of my organs, tissues, or eyes".

4 ~~11.~~ Page 5, line 22: delete lines 22 to 24.

5 ~~12.~~ Page 6, line 24: after that line insert:

6 ~~SECTION 2m.~~ 157.06 (2) (d) of the statutes is repealed. ✓

7 ~~13.~~ Page 7, line 8: after that line insert:

8 ~~SECTION 4g.~~ 157.06 (6) (b) of the statutes is amended to read:

9 157.06 (6) (b) A donor may make an anatomical gift to a designated donee or
10 without designating a donee. If a donee is not designated or if the donee is ~~not~~
11 ~~available or rejects~~ designated but the anatomical gift, any hospital is not able to be
12 accepted by the donee, anyone for whom the anatomical gift is suitable may accept
13 the anatomical gift.

14 ~~SECTION 4m.~~ 157.06 (8) (b) of the statutes is amended to read:

15 157.06 (8) (b) The time of death shall be determined by a physician who attends
16 the donor at death or, if none, the physician who certifies the death. Neither the
17 physician who attends the donor at death nor the physician who determines the time
18 of death may participate in the procedures for removing or transplanting a part of
19 the donor's body ~~unless the document of gift designates a particular physician under~~
20 sub. (2) (d).

21

(END)

INSERT
6-24

INSERT
7-8

Section #. 157.06 (2) (i) (intro.) of the statutes is amended to read:

157.06 (2) (i) (intro.) An individual may refuse to make an anatomical gift of ~~the individual's body or part of his or her body~~ by doing any of the following:

History: 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14; Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103.

*any or all of his or her organs, tissues,
or eyes*

Northrop, Lori

From: Stegall, Jennifer
Sent: Wednesday, February 09, 2005 11:41 AM
To: LRB.Legal
Subject: Draft review: LRB 05-0595/1 Topic: Anatomical gift as part of a living will

It has been requested by <Stegall, Jennifer> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-0595/1 Topic: Anatomical gift as part of a living will